

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Meeting Date: February 22, 2011

***Consideration and Approval of Amendment to Regulations
Pertaining to Equipment Only Financings for the Bond Program***

Prepared by: *Doreen Smith*

Summary. Staff requests Board approval to file emergency regulations to amend and add a section to the California Pollution Control Financing Authority (“CPCFA” or the “Authority”) regulations pertaining to Equipment Only Bond Financings. Upon approval, staff will file the regulations with the Office of Administrative Law (OAL).

Background. The primary driver of these changes is to incent California companies to accelerate equipment investments by offering an Equipment Only Bond Financing Program to encourage companies to issue bonds through CPCFA instead of using a conventional bank loan.

For equipment only financing, the useful life of the equipment is approximately 7 to 10 years. Since interest rates have remained at historically low levels, the spread between tax-exempt rates and conventional, LIBOR based rates has been very small, or non-existent. With this program, Applicants would have the chance to obtain financing using tax-exempt bonds that is initially at/or about the same cost that they would incur if they borrowed conventionally; however, they would potentially save substantial sums as interest rates rise over time and the more traditional tax-exempt/ conventional spreads reoccur. Currently, the typical costs of issuance for these transactions are too high to justify any savings that may be obtained from a lower tax-exempt interest rate.

CPCFA has discussed this program with stakeholders, and parties typically on the financing team have agreed to accept the fee reduction which includes a set capped amount. The Authority will also lower its fees by waiving the Small Business Assistance Fund Fee charged to large businesses. This will lower the costs of bond issuance fees for all applicants, including small businesses.

Regulation Change. “Section 8035.5 Equipment Only Bond Financing Program” will be added to the regulations to allow for this temporary equipment only bond financing program. Attachment A contains the proposed text of the regulation.

The proposed program includes the following provisions:

- Establishment of the Equipment Only Bond Financing Program to encourage tax-exempt bond financing for businesses to meet their purchasing needs.
- In order to participate in the program, applicants must make the following covenants at the time of application:
 1. Bonds must have a final maturity of 12 years or less.
 2. At least 90% of the net project fund of the proposed bond issue must be used to finance equipment, rolling stock and the like with expected economic lives of no

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more than 10 years. No real estate, improvements thereto, buildings or the like are eligible.

3. Bond counsel and disclosure counsel fees are collectively limited to \$45,000.
 4. Applicant's financing consultant fees are limited to 0.5% of par.
 5. Applicant's underwriter fees are limited to 0.7% of par.
 6. Applicant's counsel and co-counsel fees are collectively limited to \$12,500.
- The Authority will waive the Small Business Assistance Fund fee.
 - No more than \$20 million of bonds may be issued per borrower under this program during its two year (or less) life.
 - Unless extended by the Authority, the program will expire on the earlier of two years from inception, or until such time as the 7-day variable rate demand tax-exempt rates are at least 1.25% lower than the 30-day LIBOR rate for a period of ninety days.

Regulatory Process. After Authority approval to amend the existing regulations, emergency and regular rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the regular rulemaking process. The regular rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

To begin the regular rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to interested parties, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

February 16, 2011	5-day Notice posted on CPCFA website and sent to Interested Parties.
February 22, 2011	The Board approves the emergency regulations.
February 24, 2011	Emergency regulations filed with OAL.
March 1, 2011	Public comment period ends.

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March 7, 2011	OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect.
August 23, 2011	Emergency regulations expire.

Regular Regulations

April 5, 2011	The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued.
April 15, 2011	OAL publishes Notice and 45-day public comment period begins.
May 30, 2011	Public comment period regarding proposed regulations ends.
May 31, 2011	Public Hearing Scheduled.
June 1, 2011	Deliver regular rulemaking package (Certificate of Compliance) to OAL for 30-day review*
July 1, 2011	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State.
July 1, 2011	Regulations become effective.

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

June 1, 2011	Proposed regulation amendments are modified and Notice Proposed Changes is issued to initiate a 15-day comment period.
June 16, 2011	15-day comment period ends.
June 17, 2011	Deliver regular regulation package to OAL for 30-day review.
July 18, 2011	OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. Regular regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend regulations for the Bond Program and authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to CPCFA bond program regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING
EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER
ACTIONS RELATED THERETO**

February 22, 2011

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its General Provisions Relating to Authority Actions set forth in Article 3 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the February 22, 2011 meeting is hereby approved in substantially the form submitted. The Chair, Executive Director or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with filing such regulations with the Office of Administrative Law, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as regular regulations.

Section 2. The Chair, Executive Director or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations

Division 11. California Pollution Control Financing Authority

Article 3. General Provisions Relating to Authority Actions

§ 8035.5 Equipment Only Bond Financing Program

- (a) The Authority hereby establishes the Equipment Only Bond Financing Program to encourage bond financing for businesses to meet their purchasing needs.

In order to participate in the program, applicants must make the following covenants at the time of application:

- (1) Bonds must have a final maturity of 12 years or less.
 - (2) At least 90% of the net project fund of the proposed bond issue must be used to finance equipment, rolling stock and the like with expected economic lives of no more than 10 years. No real estate, improvements thereto, buildings or the like are eligible.
 - (3) Bond counsel and disclosure counsel fees are collectively limited to \$45,000.
 - (4) Applicant's financing consultant fees are limited to 0.5% of par.
 - (5) Applicant's underwriter fees are limited to 0.7% of par.
 - (6) Applicant's counsel and co-counsel fees are limited to \$12,500 collectively.
- (b) The Authority will waive the fee as defined in §8035(a).
- (c) No more than \$20 million of bonds may be issued per borrower under this program.
- (d) Unless extended by Authority, the program will expire on the earlier of two years from inception, or until such time as the 7-day variable rate demand tax-exempt rates are at least 1.25% lower than the 30-day LIBOR rate for a period of ninety days.